

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON**

In Re:

GENERAL ORDER NO. 97-1

CHAPTER 13 PLAN AND CONFIRMATION ORDER;
LBFs #EX. D-1 AND #EX.D-2; AND SECURED
CREDITOR ATTORNEYS' FEE CLAIMS

IT IS ORDERED THAT on and after March 1, 1997:

1. Whenever the filing of either LBF #1300.1 (Chapter 13 Plan) or LBF #1350.1 (Chapter 13 Order Confirming Plan) is required by LBRs 3015-1.B. or 3015-C., the filing party shall use the March 1, 1997 version of the applicable LBF.

2. LBF #Ex. D-1 (Financial Review of Debtor's *Farming* Business), and, if applicable, #Ex. D-2 (Financial Review of Debtor's *Non-Farming* Business), shall be filed in a Chapter 12 case, in lieu of LBF #Ex. D, whenever LBR 1007-3.C.2. requires the filing of an LBF #Ex. D.

3. LBF #Ex. D-1 (Financial Review of Debtor's *Farming* Business) and/or, if applicable, LBF #Ex. D-2 (Financial Review of Debtor's *Non-Farming* Business) shall be filed in a Chapter 13 case, in lieu of LBF #Ex. D, whenever LBR 1007-3.D.3. requires the filing of an LBF #Ex. D.

4. Secured creditor attorneys' fee claims shall be filed as follows in all Chapter 7 cases, all Chapter 11 cases which do not have a confirmed Plan, and all Chapter 12 or 13 cases which are filed or initially converted to such a chapter on or after such date:

(a) Chapter 7 and Chapter 11 Cases. A secured creditor who claims a right to reimbursement of or payment of prepetition attorney fees and costs shall include such fees and costs in the creditor's proof of claim. A secured creditor seeking reimbursement of or payment of postpetition attorney fees and costs from the Chapter 7 estate or in a Chapter 11 case shall file its attorney fee application using LBF #345 by the deadline specified in LBR 2016-1.D.2. The fee application shall be filed concurrently with the mailing of notice of the fee application, unless notice is not required pursuant to FRBP 2002 (a)(6) or the fees are noticed as part of a proposed sale of collateral. In the latter case, the application shall BOTH:
(1) clearly indicate in the caption that fees were noticed in the

notice of sale; and (2) be filed at least 10 days prior to the expiration of the period for filing objections to the sale.

(1) Fees and Costs Arising After Initial Application. A secured creditor may estimate future fees, clearly marked as estimated fees, in connection with the case as part of the initial application. In addition, a secured creditor may file a supplemental application which, unless otherwise ordered, shall be noticed in the same manner as the original application.

(2) Notice. Notice of a secured creditor's attorney fee application shall be given to all parties in interest in the case. When a secured creditor's attorney fees will be paid pursuant to a confirmed Chapter 11 plan or by the estate other than from the proceeds of sale of collateral, the secured creditor shall notice the fee application. When a secured creditor's attorney fees will be paid from the proceeds of sale of collateral, the trustee/DIP shall include notice of the fee application in the notice of proposed sale if the secured creditor's attorney advises the trustee/DIP of the amount of the fees requested within three business days after being notified in writing by the trustee/DIP of the proposed sale. If the application is filed within 10 days after entry of the confirmation order, the plan proponent shall notice the application with the notice of confirmation using LBF #1190. If the secured creditor has the opportunity to have its fees noticed as part of a notice of proposed sale or confirmation, but does not do so, the secured creditor shall, at its own expense, notice the fee application.

(3) Hearing. LBR 2002-1.H. applies.

(4) Proposed Order Required if No Objections Filed. If no objections to a notice are filed, the secured creditor shall file a proposed order pursuant to LBR 2002-1.I.

(5) Holdback for Fees If Order Not Entered and Sale Can Close. If no order has been entered by the time of the closing of the sale, the sale proceeds shall be delivered to the trustee or attorney for DIP and impressed with the secured creditor's lien in the amount of 150% of the attorney fees claimed.

(b) Chapter 12 and 13 Cases.

(1) Inclusion of Fees and Costs in Proof of Claim. A creditor who asserts a right to attorney fees and costs as part of its secured claim and who wants those fees paid by the trustee as part of the cure of the debtor's default shall:

(A) Prepetition. Include and identify the prepetition fees and costs in the initial proof of claim filed in the case.

(B) Postpetition and Preconfirmation. Within 30 days after entry of the confirmation order, file and serve LBF #302 and a supplemental amended proof of claim which adds the fees and costs claim for fees and costs incurred postpetition and preconfirmation.

(C) Postconfirmation. At least 90 days prior to the date the debtor is scheduled to make the final plan payment file and serve LBF #302 and a supplemental amended proof of claim which adds the claim for any fees and costs incurred postconfirmation.

(2) Disclosure of Preservation of Attorney Fee and Cost Claim Post Discharge. A creditor who asserts a right to attorney fees and costs as part of its secured claim but does not want those fees paid by the trustee shall disclose said claim by either filing and serving on the debtor a notice regarding attorney fee and cost claim or including the information required in the creditor's proof of claim. A secured creditor may elect to include some fees and costs in its proof of claim and to make disclosure as to other fees and costs.

(A) Information Required. Said notice shall state that the creditor asserts the right to attorney fees and costs as part of its secured claim, that the creditor does not request payment by the trustee, the amount of the claim for fees and costs to the extent known at the time the disclosure is filed, and the interest rate being charged, if any, on accrued fees and costs.

(B) Deadline to Make Disclosure. A creditor that asserts a claim for prepetition fees and costs shall make its disclosure not later than the deadline for that creditor to file a proof of claim. A creditor that asserts only a claim for postpetition fees and costs shall make its disclosure at least 90 days prior to the date the debtor is scheduled to make the final plan payment.

(3) Itemization of Fees and Costs. Within 30 days of service of a written request by an interested party, a secured creditor shall provide a written itemization of all fees and costs to the extent such itemization is not provided with the proof of claim.

(4) Deadline for Objection to Claim for Fees and Costs. Any objection to a secured creditor's fees and costs shall be filed

by a party in interest at least 60 days prior to the date the debtor is scheduled to make the final plan payment. This deadline shall not preclude the court from, sua sponte, considering the reasonableness of the fees.

(5) Performance of Plan as Cure of Debtor's Obligation to Pay Fees and Cost. A debtor who completes payments under a Chapter 12 or 13 plan and is granted a discharge under 11 U.S.C. §§1228(a) or 1328(a) shall be deemed to have cured any obligation to a secured creditor for fees and costs incurred by the secured creditor no later than 120 days prior to the date the debtor is scheduled to make the final plan payment, unless the secured creditor has disclosed the intent to preserve such a claim in accordance with, and including the information required by, point 4(b) of this General Order.

DATED: 2/7/97

/s/

Donal D. Sullivan
Chief Bankruptcy Judge